IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3111 of 2007
To
FIRST APPEAL No. 3114 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTY COLLECTOR & LAND ACQ. OFFICER & 2 - Appellant(s)
Versus
MAKWANA MALSINH KANUBHAI & 1 - Defendant(s)

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Appearance :

GOVERNMENT PLEADER for Appellant(s) : 1 - 3.
RULE NOT RECD BACK for Defendant(s) : 1 - 2.
MR VIJAY N RAVAL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/07/2007

ORAL JUDGMENT

1. The Deputy Collector and Land Acquisition Officer, Dahod and others, appellants, original opponents have filed this appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908 against the judgment and award dated 2/5/2006 passed by the learned Principal Senior Civil Judge, Dahod in Land Acquisition Reference Case Nos.202 of 2004 to 204 of 2004 and Land Acquisition Reference Case No.262 of 2004. The learned Judge by impugned judgment and award partly allowed the Reference Cases with proportionate costs. The learned Judge has also held that the claimants are entitled to get actual market price of their acquired land at the rate of 28/- per sq. mtr. as additional compensation and also entitled to solatium under Section 23(1-A) and 23 of the Act with and interest on the aggregate amount of the acquired land at the rate of 9% per annum from the date of taking over the possession till one year and thereafter at the rate of 15% per annum till realization. These appeals were filed on 13/10/2006. As there was a delay in filing appeals, the applications for condonation were

filed and delay was condoned by this Court on 25/6/2007. Thereafter, matters were admitted on 2/7/2007 by this Court.

2. Today, on behalf of applicants, Ms.Reeta Chandarana, learned AGP appears. On behalf of respondents, Mr.Vijay N. Raval, learned advocate appears. With consent of parties, matters are taken up for final disposal.

3. The facts of the present case are as under:

3.1) In the present case, the Government was desirous to acquire land of village Tadagora for the purpose of construction of Kali-2 dam and Notification under Section 4 of the Act was issued on 5/3/1998. All the procedures were completed and the Land Acquisition Officer was pleased to pass an award on 9/3/2000 and awarded Rs.5/- per sq. mtr. for non-irrigated lands and Rs.6/- per sq. mtr. for the irrigated lands.

3.2) As the claimants felt that the compensation

awarded by the Land Acquisition Officer is inadequate, they filed Reference Applications before the Court of Principal Senior Civil Judge, Dahod being Land Acquisition Reference Case Nos.202 of 2004 to 204 of 2004 and Land Acquisition Reference Case No.262 of 2004 and the Principal Senior Civil Judge, Dahod by the judgment and award dated 2/5/2006, awarded Rs.28/- per sq. mtr. as additional compensation as stated above.

4. Being aggrieved and dissatisfied with the said judgment and award, present appeals have been filed as indicated above.

5. The learned AGP has stated that in the present matter, the claimants have stated before the learned Judge that lands belonging to them are irrigated lands and having high fertility and they were taking various crops. The claimants have also stated that there are primary school and other existing facilities like electricity, water, road, railway station, factories etc. in their village. The actual price of lands surrounding to the

acquired lands are gone very high. It was stated that though the Land Acquisition Officer has decided the low price of the acquired lands on the basis of the sale transactions for last some years, it is the case of the applicants that the Land Acquisition Officer has not taken into consideration all the aforesaid factors and he has committed an error in deciding the actual market price of their acquired lands. The claimants were entitled to get market value of the acquired lands but the Land Acquisition Officer has awarded the compensation at the lower rate per sq. mtr. Therefore, being aggrieved and dissatisfied with the same, the claimants have filed Reference Cases before the Reference Court with a prayer that they may be given higher compensation in this behalf.

6. On behalf of the opponents-appellants herein, they have filed their objection at Exh.6 and they have contended that they have considered the market value upon the date of the issuance of the notification under Section 4 of the Act and therefore, the Reference Cases are required to be

rejected.

7. Before the learned Judge, Malsinh Kalubhai Makwana, who is the original applicant in Land Acquisition Reference Case No.203 of 2004 was examined and evidence of him was taken at Exh.11. The applicants have also examined Pandya Om Prakashbhai Dahyabhai, who is approved Government Valuer and has assessed the value of agriculture lands. He has given Expert Report which is on record at Exh.12. Village form No.7/12 is also produced at Exh.16 and 18. He has prepared valuation report which is at Exh.13 and also produced other documentary evidence in this behalf and submitted that valuation report is very material evidence. The claimants have also relied upon the previous judgment dated 10/8/2004 passed by the Civil Judge (SD), Godhra in the matter of Bachudiben and others which is produced at Exh.10.

7.A) The claimants have submitted that in the said judgment, the learned Judge has awarded Rs.28/- per sq. mtr. and the said market price is very proper.

It was pointed out by the learned advocate that the State of Gujarat has not filed any appeal against the said judgment and accepted the said award dated 10/8/2004. It was further stated that village which is mentioned in the above referred judgment and village of the present case are near to each other and lands in question are also near to each other and both the lands are having same fertility. Therefore, this Court should also dismiss the present appeals. The learned Judge has also relied upon the said judgment dated 10/8/2004 and awarded the compensation of Rs.28/- per sq. mtr. as stated above. The learned Judge has also relied upon the judgment of the Hon'ble Supreme Court in the case of the Special Land Acquisition Officer and another etc. etc. vs. Sri Siddappa Omanna Tumari and others etc., reported in AIR 1995 SC 840 and the learned Judge has also relied upon another judgment of the Hon'ble Supreme Court in the case of State of Gujarat and others vs. Rama Rana and others, reported in 1997 (3) GLR 1954. In the said case, the Hon'ble Supreme Court was pleased to observe that in Section 23 of the Land Acquisition Act,

price as revealed by sale instances with best evidence, where such evidences not available, compensation can be determined on the basis of annual produce in case of crops. 50% of the value of the crops should be treated as a cost of raising crops. Thereafter, the multiplied of 10 is considered to be fair compensation. The claimants have also relied upon the judgment in the case of Collector and Special Land Acquisition Officer, Kadana Dam and others vs. Vechatbhai Virasingbhai Baria, reported in 1997 (4) GCD (Gujarat), wherein the Hon'ble Court has observed that the reference court has placed reliance on the earlier award which has become final in view of the decision of this Court. Advocate for the claimants has also relied upon the judgment in First Appeal No.2490 of 1994 to 2498 of 1994 decided by the Division Bench (Coram:B.N.Kirpal, C.J. (as he was then) and A.N.Divecha, J.) dated 16/1/1995 and argued that the judgment of Senior Division Court of Godhra fixing the market price at Rs.28/- in the land of village Gultora and the said judgment of the the Hon'ble Court is accepted by the Government. It

was submitted that in this case market price of the lands in question are valued at same rate i.e. at the rate of Rs.28/- per sq. mtr. as the lands of village Tadagora is near to Village Gultora Border. Evidence produced from the applicants side, the learned Judge has further observed that the fertility lands of both the villages are same and therefore the award was proper. The learned Judge has also awarded solatium and interest in this behalf.

8. In the impugned judgment, the learned Judge has relied upon the previous judgment and award dated 10/8/2004 in the case of Bachudiben and others vs. Deputy Collector, Land Acquisition and Rehabilitation, Godhra and others, passed by the Senior Civil Judge, Godhra in Land Acquisition Reference Case Nos.177 of 2000 to 192 of 2000. In the said matter, the learned Judge by impugned judgment dated 10/8/2004, partly allowed the reference cases and held that all the claimants are entitled to get actual market price of acquired lands at the rate of Rs.28/- per sq. mtr. (i.e. an

additional compensation amount at the rate of Rs.2,80,000/- per hectare i.e. Rs.28/- per sq. mtr.) with additional compensation under Section 23(1-A) and solatium under section 23(2) of the Land Acquisition Act, 1984 at the rate of 30%, on the market value.

9. Learned AGP has stated that against the said judgment dated 10/8/2004, the State of Gujarat has not filed appeal and accepted the award. In view of the same, there is no question of prolonging the present appeals before this Court and therefore, these appeals may be disposed of finally. It may be noted that in both the matters, Notification under Section 4 of the Land Acquisition Act is published on 5/3/1998. In the matter of Bachudiben and others, the lands in question are acquired for the purpose of Machhalnala Project and in the present case, the lands in question are acquired for the purpose of Kali-2 project. Lands acquired in both the cases are adjacent lands. In the case which is referred here, the lands in question are of village Gultora, Taluka-Zalod and in the present

case, the lands in question are of village Tadagora, Taluka-Zalod.

10. Therefore, in my view, the award of the learned Reference Court is fair and proper. The learned Judge has awarded proper compensation in this behalf. Therefore, there is no merits in the present appeals and the same are required to be dismissed. Therefore, the present appeals are dismissed.

(K.M.Mehta, J.)

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